

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Peter Coulter and Robin Austin

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 28, 2017

SUBJECT: Proposed initiative measure 2017-2018 #33, concerning Constitutional Amendments

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To amend section 1(2.5) of article V of the state constitution to make it easier to amend the state constitution by allowing a petition for an initiated constitutional amendment to be electronically signed on electronic forms by registered electors in Colorado;

2. To require the secretary of state to designate the electronic forms that may be used to collect electronic signatures for a petition for an initiated constitutional amendment;
3. To allow the electronic forms containing electronic signatures to be submitted directly to the secretary of state;
4. To require the secretary of state to tabulate and validate the electronic signatures for each ballot initiative;
5. To eliminate the requirement that a petition for an initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district and instead require that such a petition be signed by at least five percent of the total registered electors;
6. To require that compilations of signatures be published on the secretary of state's webpage in real time and to allow the public to review the compilation of signatures on the secretary of state's webpage at no charge;
7. To notify voters that they may not vote "yes" for the proposed amendments to one section of the state constitution and "no" for the proposed amendments to another section of the state constitution, as they are contained in the proposed measure;
8. To amend section 1(4) of article V of the state constitution to make it easier to amend the state constitution by requiring an initiated constitutional amendment to be approved by at least 50 percent of the votes cast thereon, rather than at least 55 percent of the votes cast thereon; and
9. To eliminate the requirement that a constitutional amendment, proposed by the general assembly and submitted to the registered electors of the state for their approval or rejection, be approved by at least 55 percent of the votes cast thereon and to instead require such constitutional amendment to be approved by a majority of those voting thereon.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1(5.5) of article V of the state constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. What will be the effective date of the proposed initiative?
3. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.
4. The materials submitted include a section titled "Proponents Comments." Is this intended to be in any way a part of the substance of the initiative or is it for informational purposes only? Does it have any other purpose?
5. The proposed amendment to section 1(2.5) of article V of the state constitution states that a petition for an initiated constitutional amendment "may also be electronically signed." By "also" do you mean in addition to the current paper method used for signing such petitions?
6. How will allowing a petition for an initiated constitutional amendment to be signed electronically make it easier to amend the state constitution?
7. What is an electronic form? Do electronic forms already exist or will they have to be created? If the electronic forms have to be created, is the secretary of state required to create them?
8. How will the electronic forms be made available to petition signature gatherers for a petition for an initiated constitutional amendment?
9. Will there be any costs associated with creating the electronic forms or making them available to petition signature gatherers? If so, who is responsible for those costs?

10. Will petition signature gatherers need to have access to tablets or other electronic devices to allow them to collect electronic signatures? If so, who would be responsible for providing such devices and for the cost of such devices? Would the potential inability for some proponents or signature gatherers to access electronic devices create any inequities in the petition signature gathering process?
11. How would the electronic forms containing electronic signatures be submitted to the secretary of state's office?
12. The measure requires the secretary of state to tabulate and validate the electronic signatures. Is verifying an electronic signature the same as verifying a signature on paper? Will this requirement create additional work or costs for the secretary of state's office?
13. Regarding the compilations of the signatures to be published on the secretary of state's website, is there any requirement regarding how the secretary of state must compile the signatures? Do you anticipate that there will be any cost associated with the compilation of signatures?
14. Is the secretary of state required to compile and post all signatures gathered electronically or only those that have been validated?
15. How long will signatures remain on the secretary of state's website?
16. The proposed measure states that the compilations of signatures will be published on the secretary of state's website in "real time." What does "real time" mean?
17. The proposed measure states that the compilations of signatures will be available to the public at no charge. If there are costs associated with making the compilations available to the public, will the secretary of state's office be responsible for those costs?
18. Are there any security concerns regarding posting electronic signatures of members of the public on the secretary of state's website? Would there be any security measures to ensure that someone's signature could not be used fraudulently after it was posted on the secretary of state's website? If someone's signature was used fraudulently after it was posted on the secretary of state's website, could the state be liable for any damage caused by the fraudulent use of the signature?

19. Do you have any concerns that registered electors would not want to sign a petition for an initiated constitutional amendment because their signatures would be posted on a public website?
20. Will petition signature gatherers be required or allowed to offer registered electors the option to sign a petition for a constitutional amendment using the current paper method or the option to provide an electronic signature, or will the proponents of a petition have to choose only one method of gathering signatures?
21. Are petitions for initiated changes to the Colorado Revised Statutes allowed to be electronically signed, or does the option to have petitions electronically signed apply only to initiated constitutional amendments?
22. The measure proposes to eliminate the requirement that signatures for an initiated constitutional amendment be collected from at least two percent of the registered electors who reside in each state senate district. Is it your understanding that the current signature requirement would apply to the proposed measure even though the proposed measure would eliminate it?
23. Why have you included the last sentence in sections 1(2.5) and 1(4)(b) of article V of the proposed initiative specifying that a voter is required to vote yes or no on the entire measure? Are you aware of any voters who have been confused by this requirement in the past? Is it your intent that if the initiated measure is approved by the registered electors and becomes law, that this language would appear in the constitution? If so, do you think it may cause confusion later, when the language isn't being read in connection with an election to change the language of those sections?
24. The proposed measure changes the percentage by which an initiated constitutional amendment must be approved by the electors from at least 55 percent of the votes cast thereon to at least 50 percent of the votes cast thereon. Is it your understanding that the 55 percent requirement would apply to this proposed measure even though the proposed measure would reduce the requirement to 50 percent?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the

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proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each constitutional and statutory section being amended is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, section 1 of article V, **amend** (4) as follows:".
2. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. The existing headnotes should be added to sections 1 and 2 of the proposed initiative and be in bold-face type:
 - a. **Section 1. General assembly – initiative and referendum.**
 - b. **Section 2. Amendments to constitution – how adopted.**
3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and ~~stricken type~~ to show language being removed from the Colorado constitution.
4. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
5. In section 1(4), the reference to section (4) in the middle of the paragraph should be in strike type.
6. Sentences generally do not start with the word "and."
7. The phrase "he or she" should be used rather than "s/he."